

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Denial of the Family  
Child Care License of Mary Marshall

**FINDINGS OF FACT,  
CONCLUSIONS  
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on August 30, 2007, at 9:00 a.m., at 15 West Kellogg Boulevard, Room 42, St. Paul, MN 55102. The OAH record closed at the conclusion of the hearing.

David MacMillan, Assistant Ramsey County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55103, appeared on behalf of the Department of Human Services (Department) and Ramsey County.

Mary Marshall, 2001 Montana Avenue East, St. Paul, MN 55119-3030 (Applicant), did not appear in person or by counsel.

**STATEMENT OF ISSUES**

The issues presented in this case are whether the Commissioner properly denied Ms. Marshall's application for a family child care license because she failed to comply with applicable laws or rules and knowingly withheld relevant information from or gave false or misleading information to the Commissioner in connection with an application for a license.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On July 27, 2007, the Department sent by first class mail a copy of the Notice and Order for Hearing to Mary Marshall at 2001 Montana Avenue East, St. Paul, MN 55119-3030.<sup>1</sup>

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<sup>1</sup> Affidavit of Service by U.S. Mail (July 27, 2007).

2. The Notice and Order for Hearing scheduled a hearing in this matter at 9:00 a.m. on August 30, 2007, at 15 West Kellogg Boulevard, Room 42, St. Paul, MN 55102.

3. The Notice and Order for Hearing specifically notified the Applicant as follows:

Failure to appear at the hearing will result in the allegations of the Notice and Order for Hearing, including the incorporated order [from the Commissioner], being taken as true. This means that the action being appealed will be upheld.<sup>2</sup>

4. The Applicant did not appear for the hearing, nor did the Applicant contact the Administrative Law Judge prior to the hearing to seek a continuance or request any other relief.

5. Because the Applicant failed to appear for the hearing, she is in default.

6. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50 and 245A.05 (2006).

2. The Applicant received due, proper and timely notice of the reasons for denial of the license and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. The Applicant is in default as a result of her failure to appear at the hearing.

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<sup>2</sup> Notice and Order for Hearing at 2.

6. The Commissioner may deny a license if an applicant fails to comply with applicable laws or rules, or knowingly withholds relevant information from or gives false or misleading information to the Commissioner in connection with an application for a license or during an investigation.<sup>3</sup>

7. An applicant shall not be issued a license if the applicant or any other person living in the day care residence or present during the hours children are in care, or working with children, abuses prescription drugs or uses controlled substances or alcohol to the extent that the use or abuse has or may have a negative effect on the ability of the provider to give care or is apparent during the hours children are in care. Caregivers who have abused or are dependent on chemicals and who have gone through treatment or therapy must have 12 months of verified abstinence before licensure.<sup>4</sup>

8. In connection with her application, the Applicant submitted information that an adult family member living in her home had a history of chemical dependency treatment but could not provide verification of 12 months of abstinence. The Applicant then submitted false information to the Department indicating that the adult family member had moved out of her home and that the Applicant did not provide care for this family member's child.<sup>5</sup>

9. The Commissioner properly denied the license on the basis that the Applicant failed to comply with applicable laws or rules or knowingly withheld relevant information from or gave false or misleading information to the Commissioner in connection with the application for a license.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner affirm the denial of a family child care license of Mary Marshall.

Dated: August 30, 2007.

s/Kathleen D. Sheehy  
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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Default

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<sup>3</sup> Minn. Stat. § 245A.05.

<sup>4</sup> Minn. R. 9502.0335, subp. 6 (2005).

<sup>5</sup> Notice and Order for Hearing (Ex. A).

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Cal Ludeman, Commissioner, Department of Human Services, 540 Cedar Street, St. Paul, MN 55164, to learn the procedure for filing exceptions or presenting argument. Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.